

INITIAL COMMENTS OF THE DIVISION OF ENERGY RESOURCES
ON COMPETITIVE RETAIL MARKET INITIATIVES

I. Introduction

On Thursday, May 31, 2001, the Department of Telecommunications and Energy convened a Technical Session “to discuss steps necessary to start making retail market choice available this year.” Letter of James Connelly, Chairman, dated May 10, 2001, at 1. At the outset of the Session, Chairman Connelly invited the participants to submit supplemental written comments by Thursday, June 14. The Division of Energy Resources (“DOER”) appreciates having this opportunity to expand on the remarks made at the Technical Session by Mr. Daniel Sardo, DOER’s Team Leader for Restructuring and Regulation. These written comments contain recommendations for actions the Department can take in the short run to produce immediate results and others which can be taken promptly but will take longer to produce results.

DOER agrees with the remarks of the Chairman with respect to the progress that has been made since the commencement of restructuring on March 1, 1998. Tr., pp. 5-6. Massachusetts’ method of restructuring is transforming its aging electricity supply infrastructure into a modern system of more efficient and environmentally-sound facilities. Massachusetts’ restructuring approach has attracted approximately 5 billion dollars in new investment capital to repower older plants, build new, technologically-advanced generating facilities and add new pipeline capacity in Massachusetts alone. Finally, it has accomplished these things without jeopardizing the financial stability of the distribution and transmission companies serving the Commonwealth.

Notwithstanding those achievements, DOER shares the Department’s concern that more can and should be done to energize the retail market. DOER commends the Department for taking a second look at some of its policy decisions made in earlier proceedings, under different

circumstances, which may now be problematic for the development of retail competition. The Department's renewed attention to identifying and eliminating "barriers to competitive-supplier choice and barriers to competitive supplier entry into the market" (Tr. 8) could not be timelier. Virtually every commenter at the Technical Session agreed that Massachusetts electricity consumers in general, and Default Service ("DS") customers in particular, need access to suppliers selling attractive products. There was also a virtual consensus that the market needs to be made more attractive to suppliers. Higher-than-anticipated DS prices have started to increase the interest of customers and suppliers alike in greater retail competition. However, the Department can do a number of things to help DS customers and suppliers accelerate momentum toward greater retail competition this summer and throughout the remainder of the transition period. Below are our suggestions for initiatives by the Department.

II. Recommendations

A. Implement Initiatives Likely to Produce Immediate Results

1. Require each of the Massachusetts electric distribution companies to implement immediately pilot programs that will assist DS customers who wish to consider alternatives to DS supply.

Under the Restructuring Act, the Department was granted the authority to require distribution companies to formulate plans to accommodate retail choice:

The department is hereby authorized and directed to require electric companies organized pursuant to the provisions of this chapter to accommodate retail access to generation services and choice of suppliers by retail customers, unless otherwise provided by this chapter. Such companies shall file plans that include, but shall not be limited to, the provisions set forth in this section.

M.G.L. c. 164, § 1A(a). Although each of the jurisdictional electric companies have previously filed restructuring plans with the Department, and have obtained approvals thereof, it is clear that such plans must now be supplemented with additional action plans to facilitate customer choice.

Without exception, the companies' restructuring plans focused more on stranded cost recovery and asset divestiture than on steps each company would take to assist with the transition to retail choice. In retrospect, perhaps too little attention was paid to the role distribution companies must play in facilitating the transition to retail choice.¹ However, Massachusetts is only midway through its statutory transition period. With renewed attention to the retail side of the restructuring equation, coupled with swift and creative action by the Department, there can be some increase in customer choice for DS customers in the short-run, and a sufficiently competitive market in place by the sunset of Standard Offer Service.

a. Massachusetts Electric Company's Proposal

DOER applauds each of the companies for developing ideas presented at the Technical Session to assist DS customers in wading into the competitive retail market. In particular, Massachusetts Electric Company ("MECo") should be congratulated for taking the initiative to meet with competitive suppliers to understand the barriers these companies must overcome to provide competitive offerings to DS customers in Massachusetts. It is apparent to DOER that MECo's process has resulted in a good proposal. *See*, Letter to Secretary Cottrell from Ronald T. Gerwatowski, Senior Counsel, National Grid, dated May 22, 2001, Attachment 1 (hereinafter, "MECo's Proposal"). To the extent that MECo is seeking Department approval of costs associated with this effort, MECo should present a budget which the Department should review and approve expeditiously.

Although DOER can support the implementation of MECo's Proposal as is, we believe it would be improved by having the DS customer lists MECo proposes to give to suppliers include

¹These comments should not be interpreted as suggesting in any way that the electric companies' restructuring plans, or the respective settlement agreements, should be revisited or reopened by the Department.

residential customers as well². Based on the consumer calls to DOER's Hotline, residential customers are as interested as larger customers in information from suppliers about prices and products. Moreover, DOER sees no legal impediment to disclosing residential customers' names and addresses and their class of service. Although 222 CMR 12.03(9) limits disclosure by distribution companies of proprietary information without written consent, DOER does not consider name, addresses and class of service to be proprietary.

MECo's proposed use of a "Participation Agreement" (*id.*) requiring each supplier not to use customer lists for any purpose other than to market power and related services should be required in all such plans. DOER also endorses MECo's effort to identify a list of qualified suppliers who are unequivocally prepared to make offers to qualified customers. This will alleviate consumer frustration with shopping but finding no offers. DOER believes that most of the screening requirements mentioned in MECo's Proposal --1) DTE registration; 2) proven effective interface with MECo's data exchange; 3) demonstrated ability to provide customer service; and 4) commitments to respond with offers to customers -- are valid and not unreasonably discriminatory. However, the fifth proposed requirement -- financial viability -- is already a precondition for DTE licensing [(220 CMR 11.05(2)(b)(5) and (13)] and should not be included as a screening mechanism by MECo. While DOER understands MECo's desire to limit the number of qualified suppliers to a manageable level, it is DOER's hope that the list would be more inclusive than exclusive. Legal challenges to MECo's pilot program by excluded suppliers

² We understand that MECo will solicit, but cannot guarantee, the participation of competitive suppliers who are willing and/or available to provide offerings to residential customers at this time.

are reasonably foreseeable, could delay its implementation, and thereby frustrate its essential purpose³.

Finally, we assume that MECo and all of the other companies will keep detailed records of the results of the pilot programs, including success and failures. Such data will be needed to evaluate the program and determine how it can be improved.

b. NSTAR's Proposal

DOER also appreciates the effort NSTAR made in assembling a program description to present at the Technical Session. We look forward to seeing more details when NSTAR files its "Matchmaker" proposal with the Department. Based on the information presented by Mr. Vaitkus at the Technical Session (Tr., 63-66) DOER has several suggestions for the Department and NSTAR to consider. First, as to scope, NSTAR's program would not include residential customers. DOER's preference, as outlined above, would be to include residential customers in all pilot programs. Second, the success of NSTAR's program is dependent on interaction between NSTAR and its customers, as opposed to interaction between competitive suppliers and the customer. NSTAR would remain the repository of critical information rather than a facilitator of communication between the sellers and buyers. We understand and agree with NSTAR that customer information should be handled in a sensitive manner. However, DOER believes that distribution companies should do everything reasonably and prudently possible to remove the barriers that presently exist between suppliers and customers. Although "matchmaking" is indeed an art, it need not be conducted as a masquerade ball where buyer and seller remain masked. If NSTAR's "Matchmaking" approach is approved on a pilot basis by the

³ DOER can accept the need for limited utility screening mechanisms in the context of these pilots in order to expedite them successfully. However, as a matter of general practice, the rules for suppliers to participate in the Massachusetts retail electric market should be set by the DTE or other appropriate government agency, not the utilities.

Department, we urge that there be careful data collection in order to evaluate the success and customer satisfaction with that approach relative to others.

c. Fitchburg's Approach

DOER commends Fitchburg for its innovative approach to matching buyers and sellers. Linking committed buyers and committed sellers is, in essence, the goal at hand. Fitchburg's USource program has been successful in moving load into the competitive market, although it has been limited to larger customers. It appears to DOER that this approach could be used with residential customers provided Fitchburg can deliver the same type of high quality customer education to smaller customers. The Department should consider requesting that Fitchburg submit a proposal to expand the USource approach to include smaller DS customers, including a budget for intensive customer education to turn "browsers" into committed buyers.

d. WMECo's Approach

Although we recognize that WMECo's customer base is not large (Tr. at 66), the Department should require a far higher level of effort on the part of the WMECo than it has proposed. As we understand the Company's testimony, WMECo has conducted an unspecified number of "customer forums" with suppliers and completed one mailing for a supplier to "a certain group of WMECo customers." (Tr., pp. 66-67). The Company did not propose any other initiatives for the future.

DOER believes that retail market pilot programs can be tailored to reflect the unique characteristics of individual service territories. However, given the important economic development implications of electricity prices for the Western Massachusetts economy cited by the Company (Tr., pp 39-40), the Department should require a larger effort on the part of WMECo and approve the necessary budgets to implement it.

2. Direct electric companies to procure DS on a twelve-month basis and provide 12 months worth of prices to DS customers for each DS period.

From discussions with competitive suppliers, DOER has concluded that their decision-making process for entering the market, and their subsequent marketing efforts, would be aided greatly by customers knowing what the monthly price of DS will be for at least the next twelve months. With twelve months of prices known in advance, competitive suppliers would be in a better position to fashion and market products using DS as a known benchmark.

In much the same fashion, retail customers would be better able to evaluate competitive offers in comparison to twelve months of DS prices than just six. To facilitate that dynamic, the Department should direct all distribution companies to (1) procure DS on a twelve-month basis, and (2) publicize those monthly prices and accompanying average fixed prices as soon as practicable to all DS customers.

DOER sees this initiative as consistent with the Restructuring Act's DS procurement provision which provides, in part, as follows:

The distribution company shall procure such service through competitive bidding; provided, however, that the default service rate so procured shall not exceed the average monthly market price of electricity; and provided, further, that all bids shall include payment options with rates that remain uniform for periods of up to six months.

M.G.L. c. 164, § 1B(d). In its Final Guidelines for DS, the Department gave electric companies leeway to conduct procurements "for a period ranging from a minimum of six months to a maximum of one year." D.T.E. 99-60-B (June 30, 2000) at 16. This recommendation would have the Department direct all distribution companies to use uniform twelve-month periods as of the next solicitation for DS by each electric company. DOER recognizes that a twelve-month procurement will only provide 12 months of price discovery in the first month. One possible

solution would be to require rolling monthly solicitations. If this proposal is deemed to be too administratively burdensome, subsequent twelve-month procurements could be performed at six-month intervals. This would ensure that no Default Service customer would have less than six months of default service price certainty to compare with competitive price offerings.

3. Redesign the DTE Website to help consumers access active suppliers

Fifty-seven percent of the more than six thousand calls received by DOER's Hotline included expressions of frustration with the listing of licensed competitive suppliers who are not actively offering products. The DTE's current list of Competitive Suppliers does not distinguish between those who are licensed but not active and those actively marketing products. Customers who are seriously shopping are consequently forced to call each supplier on the list, finding most are not active sellers.

Suppliers should be required to provide to the DTE with a quarterly update, by email or fax, which identifies the service territories in which they are marketing as well as the customer classes they have targeted. (A standardized check-off list of service territories and rate classes could make it easy for the suppliers to comply with this task.) As other states have done, the DTE should redesign its website to facilitate customers looking for information by customer class and by service territory. (See, for example, the Pennsylvania PUC "Electric Choice" website at: www.electrichoice.com.)

The information on the website should be updated quarterly, consistent with the marketer updates. Suppliers who fail to update or who claim to be offering products but make no offers to qualified customers should be removed from the website. Once the retail market matures, this function should no longer be necessary.

4. Review the name "Default" Service

DOER has heard informal comments from a number of attendees at the Technical Session that at least some customers have voiced an objection to being classified as “default” customers. That word implies for some the notion that they have not paid their bills on time and have, therefore, “defaulted.” For some customers, particularly senior citizens, the idea of being classified as a person who has failed to pay bills on time when, in fact, they have been timely payers, is distressing.

If the Department is persuaded that this is problem, DOER would not object to changing the name of DS. If the distribution of customer information, including the type of service received, would be more acceptable to the public if the term “Default Service” were changed to something else, DOER would understand the Department’s objective in so doing.

B. Implement Immediate Initiatives Likely to Produce Results Longer-Term

1. Investigate the Benefits to the Competitive Retail Market of Default Service Procurements of Longer than Twelve Months

As mentioned above, the Department’s Final Guidelines limit DS procurements to twelve months (D.T.E. 99-60-B at 16). We recommend that the Department revisit that limitation. Competitive suppliers have expressed to DOER a strong preference to know the price of DS for as extended a period of time as possible. After further investigation, the Department may conclude that it is in the public interest to establish monthly DS prices now through the end of the transition period. With a long benchmark of monthly prices against which to compete, competitive suppliers should be able to build sufficient momentum and infrastructure by the end of the SOS period. For many of the reasons cited above in our recommendations to direct the use of twelve-month procurements, DOER urges the Department to investigate the potential for even longer procurements and retail price paths to facilitate development of the retail competitive market.

2. Price DS as Accurately as Possible

For the remainder of the Transition Period and beyond, the price of DS will have an important influence on the competitive market. Even with a robust retail competitive market, DS may serve as a benchmark for discounts. Absent a robust competitive market, it will influence the degree of interest customers have in shopping for whatever alternatives exist.

Several speakers at the Technical Session pointed out what they believe to be shortcomings in the pricing and procurement of DS. DOER acknowledges that the Department has previously conducted an exhaustive review of issues pertaining to DS procurement and pricing D.T.E. 99-60-B (June, 2000). Notwithstanding that effort, DOER believes that the Department should reconsider its policy on cost allocation with respect to DS. As several commenters mentioned, the Department is not yet including in the retail price of DS all of the costs incurred by the distribution company to provide that service (Tr., pp. 79-80; 98-99; 113; 123-125; 126-127). Here we are not referring to any artificial “adder” or hypothetical estimate. Rather, we are referring to the overhead costs involved in procuring and administering the DS and the bad debt associated with that service. They should be included in the DS price, not in the distribution rate. Although this necessarily means that the price of DS will be marginally higher than it would otherwise be, it is unfair to those customers who wish to wade into the competitive stream to have to subsidize the cost of DS through their distribution charge. The Department has suggested, in essence, that that subsidy is fair because at any given time, any customer may need DS as a back up and should therefore support the DS infrastructure D.T.E. 99-60-C at 13. However, were the cost burden of the DS infrastructure and bad debt lifted from the shoulders of shoppers, “customer choice” would be a much more meaningful term. Only those choosing to remain on DS should pay for the insurance policy of DS. To the extent that that creates hardship for low-income customers with no offers from suppliers, the Department should remedy that

problem using further adjustments to rates for low-income customers rather than continue to allow a broad-based subsidy for all DS customers.

3. Require Distribution Companies to Install Advanced Meters on a Systematic Basis

As was mentioned by many of the commenters, one of the barriers to the development of a retail market in Massachusetts is the absence of advanced metering and the information customers can gain from such meters about their own consumption patterns (Tr.,pp 104; 123; 130-133). We recommend that that Department consider taking three initiatives in this regard.

a. Install Advanced Meters for Customers with Material Loads

We urge that the Department order the distribution companies to install time-of-use (“TOU”) meters for all customers with material levels of consumption. To be clear, DOER is not recommending that all customers with material levels of consumption be put involuntarily on TOU rates. Rather, our recommendation is that customers with material levels of consumption be given TOU meters and bills showing their consumption patterns by TOU. Customers qualifying for TOU meters would not be billed for them. The costs of these meters and their installation would be expenses to the distribution company, recoverable in rates.

DOER views this as a necessary initial step for the transition to a sustainable retail market. Until consumers become more aware of their own consumption patterns, and the costs associated therewith, they will not be able to appreciate adequately the products that the retail market can deliver. To paraphrase Professor Joskow at a recent session of the Electric Restructuring Roundtable, as long as consumers buy kilowatthours in a manner akin to paying for groceries by weighing the grocery cart at the checkout counter rather than paying by individual items, they will not appreciate the value of a kilowatthours consumed on peak versus

off. As a first step, consumers need information on their own consumption patterns. Therefore, customers with material loads should be provided with TOU meters and bills that show their consumption patterns.

The DTE should first establish what constitutes a “material load.” Thereafter, each distribution company should be asked to identify the number of customers in each customer class with material loads. The companies should also estimate the time frame and cost to install TOU meters, and to install the billing software necessary to issue larger number of bills showing the cost of electricity at various times of use. The Department should thereafter set a compliance schedule for each company to complete installation for all existing customers with material loads and, thereafter, for new customers with such loads. Over time, the Department could revisit what constitutes a material load with an eye toward lowering the threshold as practicable.

b. Require All New Meter Installations to Be TOU Meters

The DTE should require that all new meters installed be TOU meters. It is time to move forward technologically, and end the practice of installing out-of-date meters. Again, DOER is not recommending that customers receiving TOU meters automatically be put on TOU rates. The purpose of the TOU meter installation would be to provide customers with information on their consumption patterns and, thereby, prepare them to understand the benefit of various retail products.

c. Consider Universal Deployment of Advanced Metering

After the first two initiatives are underway, the Department should consider the merits of requiring universal deployment of advanced metering, including for small commercial and residential customers. One of the more frequent criticisms of restructuring is that only large customers can benefit. While DOER does not share that view, restriction of advanced metering to large customers may impede participation in the retail market by smaller customers. Even if

one assumes that smaller customers will participate in the market largely on an aggregated basis, their access to advanced metering may make them more attractive as participants in an aggregation and give them access to lower rates because of the quality of actual use data available from them. Therefore, we urge the Department to further investigate the cost and benefits of implementing universal deployment of advanced metering.

4. Allow Unified Billing and Electronic Billing at least on a Pilot Basis and Adopt an Electronic Signature Protocol

The Department has previously considered and rejected proposals from competitive suppliers to allow them to issue unified bills, including electronic-only bills. (Tr., pp. 76-77; 81; 85) Although there are many reasons why the retail market has not developed to the degree the Department had hoped, we believe this policy may be one of the chief barriers to be eliminated. To test that proposition, we urge the Department to work with one or more of the distribution companies to develop a pilot program which allows for both of these practices on a limited basis. The pilot would serve to refine the mechanics of implementing unified billing and test customer satisfaction with unified bills, including e-bills. The costs and benefits of the pilot could then be evaluated based on experience rather than conjecture.

We further urge the Department to implement an electronic signature protocol as an option for consumer “affirmative choice” of a competitive supplier, as provided in c.164, section 1F(8)(a)(ii). Attached as Attachment A is a brief analysis of the status of electronic signatures in the Commonwealth.

5. Implement a Partial Payment Policy

As another signal to the competitive supplier community that Massachusetts wants retail competition, the Department should change its current policy of allocating partial payments first

to the distribution company (Tr., pp. 73,117). A more equitable approach would be to allocate partial payments consistent with the magnitude of the bill components. For example, if the generation portion of the bill is equal to half of the bill, half the partial payments should be allocated to the generation supplier.

This change in policy would not relieve the generation supplier of the risk of bad debt. However, it would calibrate that risk to a level equal to the actual degree of nonpayment by the customer. Although the difference in total dollars collected may not be significant, the policy change would improve incrementally the perceived retail market climate in Massachusetts.

6. Investigate and remove regulatory barriers to the development of on-site generation

Because margins on the sale of electricity and gas tend to be minimal, competitive suppliers have indicated to DOER that they plan to bundle other services consumers want with those commodities. One of the services frequently mentioned for bundling is on-site generation. However, there are a number of regulatory policies and uncertainties which suppliers cite as impeding the development of on-site generation in Massachusetts. Some are environmental permitting issues. However, others are within the jurisdiction of the Department. They include uncertainty regarding potential changes in Auxiliary Service Rates and uncertainty regarding the applicability of exit fees if too many customers implement on-site generation within a given franchise area.

With respect to the Auxiliary Service Rates and lost distribution revenues, DOER recommends that the Department ask all electric companies to implement on a voluntary basis the policies accepted by Massachusetts Electric in the EUA Settlement Agreement (D.T.E. 99-47 p. 11) With respect to other perceived barriers, we urge the Department to convene an

interagency working group including the Department of Environmental Protection and DOER to identify and eliminate regulatory barriers to the development of cost-effective on-site generation in Massachusetts.

III. Conclusion

DOER fully supports the Department's determination to identify and eliminate barriers to the development of a retail market serving the needs of Massachusetts' electricity consumers. We have offered these recommendations consistent with that goal. At this mid-point in the transition, there is sufficient time to make necessary regulatory adjustments. We look forward to working with the Department as it considers and implements these initiatives.

Respectfully submitted,

DIVISION OF ENERGY RESOURCES

Robert F. Sydney, General Counsel

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